

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY)	
)	
)	ICC Docket No. 16-0453
Petition for Approval of the 2017)	
Illinois Power Agency Procurement Plan)	
Pursuant to Section 16-111.5(d)(4) of the)	
Public Utilities Act)	

REPLY BRIEF ON EXCEPTIONS OF THE PEOPLE OF THE STATE OF ILLINOIS

The People of the State of Illinois, through Lisa Madigan, Attorney General of the State of Illinois (“the People” or “the OAG”), hereby file their Reply Brief on Exceptions (“RBOE”) to the Brief on Exceptions and Exceptions filed in response to the Administrative Law Judge’s (“ALJ”) November 14, 2016 Proposed Order addressing the Illinois Power Agency’s (“IPA”) 2017 Procurement Plan (“the Plan”) filed in accordance with the filing requirements of Section 16-111.5(d)(3) of the Public Utilities Act (“the Act”). 220 ILCS 5/16-111.5(d)(3). In particular, the People’s RBOE responds to the BOEs filed by Ameren Illinois Company (“Ameren”), Commonwealth Edison Company (“ComEd”) and the Commission Staff (“Staff”), related to Section 9 of the Plan, which addresses the procurement of energy efficiency.

It must be noted that looming over the litigation in this proceeding is the recognition that the General Assembly on December 1, 2016 passed Senate Bill 2814, a bill that significantly changes the delivery of energy efficiency in Illinois, including provisions that provide Ameren and ComEd with new profits for what heretofore has been a dollar-for-dollar recovery of costs for delivering these customer-financed programs. Media reports indicate that the Governor will sign that legislation.

Under the bill, which takes effect June 1, 2017, Section 16-111.5B was amended to eliminate energy efficiency procurement by the IPA going forward.¹ The effective date of the bill is June 1, 2017. The language of the bill makes clear that Commission findings on Section 16-111.5B matters in this proceeding would be moot:

The requirements set forth in paragraphs (1) through (5) of this subsection (a) shall terminate after the filing of the procurement plan in 2015, and no energy efficiency shall be procured by the Agency thereafter. Energy efficiency programs approved previously under this Section shall terminate no later than December 31, 2017.

SB 2814, Amend. 3, Section 16-111.5B(a)(5) (pdf page 432).

However, the language makes clear that *existing* IPA contracts that are scheduled to expire May 31, 2017, can remain in place through December 31, 2017:

(c) The changes to this Section made by this amendatory Act of the 99th General Assembly shall not interfere with existing contracts executed under a Commission order entered under this Section.

(d)(1) For those electric utilities subject to the requirements of Section 8-103B of this Act, the contracts governing the energy efficiency programs and measures approved by the Commission in its order approving the procurement plan for the period June 1, 2016 through May 31, 2017 may be extended through December 31, 2017 so that the energy efficiency programs subject to such contracts and approved in such plan continue to be offered during the period June 1, 2017 through December 31, 2017. Each such utility is authorized to increase, on a pro rata basis, the energy savings goals and budgets approved under this Section to reflect the additional 7 months of implementation of the energy efficiency programs and measures.

¹ See, *gen'ly*, <http://www.ilga.gov/legislation/99/SB/09900SB2814ham003.htm>, as modified by Amendments 4 through 10.

SB 2814, Amend. 3, Section 16-111.5B(a)(5) (pdf at 433-434). Accordingly, assuming the Governor signs the legislation, the issues that are addressed in the Proposed Order related to Section 9 (Energy Efficiency Procurement) in the Plan will become moot as of June 1, 2017.

That being said, given that the bill has not been signed by the Governor, the People submit the following reply to the aforementioned BOEs.

I. Section 9.4.2 Improving/Refining Bids

In response to the Proposed Order's reasonable decision to send the issue of what constitutes best practices in vendor contracting for IPA third-party efficiency programs (PO at 63) to the Stakeholder Advisory Group ("SAG") workshops, ComEd argues that the Commission can make a finding here on appropriate contract terms and practices and simply adopt the procedures and terms included in ComEd's latest IPA vendor contracts. ComEd BOE at 9, 13. This suggestion should be rejected for a couple of reasons.

First, as the Proposed Order correctly noted, the record lacks evidence to support the adoption of ComEd's proposed contract templates. PO at 63. Again, ComEd did not discuss or explain its reasoning for any specific contract terms for which it now seeks approval. In addition, Staff's Comments made clear that these contracts have not been discussed in SAG workshops. *Id.* The People note, too, that ComEd admits that its latest provisions have been revised from prior years based on a recent Commission finding in another docket that disallowed certain costs incurred by the Company when a vendor that had been supplied start-up funds by the Company went bankrupt. ComEd BOE at 8. The Company admits these new contract provisions for which it seeks Commission approval are more restrictive than prior contract terms. *Id.* at 9. Whether these new terms are appropriate or unnecessarily stringent (thereby

discouraging bids and ultimately increasing costs charged by vendors seeking to minimize their risk of expense recovery from the company) have not been addressed in this docket.

ComEd claims that “it is unclear what additional evidence ComEd should or could have provided to support its revised and more restrictive contract provisions.” ComEd BOE at 9.

The People submit that the workshop process is the best forum for addressing this issue.

Vendors who would be impacted by any future Commission finding related to contracting best practices could be permitted to join the discussion and aid the parties, including consumer and environmental stakeholders, Staff and the utilities, in attempting to reach consensus on the issue.

The lack of specific evidence on that topic in this record supports the finding in the Proposed Order to address the question of the appropriate level of contract scrutiny, as well as which contract terms best protect ratepayers while not reducing bid participation, in SAG workshops.

The People note, too, that SB 2814, assuming it becomes law, includes a requirement that Ameren and ComEd permit third-parties to bid on energy efficiency contracts.² A Commission finding in this docket that sends the issue to the SAG would jump-start the resolution of this issue, and perhaps create consensus on best practices prior to the initiation of programs under new Section 8-103B of the Act.

For all of these reasons, the Commission should affirm the conclusion at pages 62-63 in the Proposed Order.

II. Section 9.6.8 – ComEd Programs Recommended for Approval

Despite the fact that the Proposed Order’s well-reasoned conclusion to include two of the ComEd energy efficiency programs that pass the total resource cost test (“TRC”) test but failed the Utility Cost Test (“UCT”) does not impact Ameren’s portfolio, Ameren nevertheless

² See, *gen’ly*, <http://www.ilga.gov/legislation/99/SB/09900SB2814ham003.htm>, as modified by Amendments 4 through 10, at 210-211.

weighed in on the conclusion and urges the Commission to reject the programs. Specifically, both the Middle School Energy Education Campaign Program and the Low Income Multifamily Efficiency Program (“LIMEP”) have UCT values equal to 0.95, but TRC values that exceed 1.0. ComEd did not take issue with the Proposed Order’s conclusion on this point. The IPA recommended that it be included in the ComEd portfolio. IPA Draft Plan at 130.

Nevertheless, Ameren and Staff opine that the Commission should look beyond the cost-effectiveness test articulated in Section 16-111.5B as the benchmark for accepting program bids and assess whether the programs exceed the cost of supply. Ameren BOE at 5; Staff BOE at 15. The People urge the Commission to reject those recommendations.

Section 16-111.5B(a)(5) provides that the Commission shall approve programs “if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent practicable, and otherwise satisfy the requirements of Section 8-103 of this Act.” 220 ILCS 5/16-111.5B(a)(5). These programs both pass the TRC test. Moreover, it is “practicable” to include programs that benefit the public at large (a school education program) and low income customers (a low income multifamily efficiency program). These programs have societal benefits that go beyond the benefits measured in the cost-effectiveness test as well, such as increasing the pool of urgently needed affordable housing in the ComEd service territory. The Proposed Order aptly recognizes these additional societal benefits. PO at 111. While Staff and Ameren have made clear their belief that the statute requires that programs pass the UCT before being included in the IPA portfolio, the Proposed Order’s rejection of Staff’s recommendation to “propose a bright line test based on the UCT” aptly follows the language of the statute:

With this understanding, the Commission cannot adopt Staff's position which seems to propose a bright line test based on the UCT and would essentially ignore the results of the TRC.

It is clear to the Commission that ERC's LIMEP program will provide many benefits, which are not captured in the UCT test. The Commission notes that this program is designed to lower the bills of low income households, which will reduce the number of households that are unable to make monthly energy payments and thereby reduce the utility's uncollectible expense. For these reasons, the Commission finds that this cost-effective program should be included in the 2017 Plan.

Although the bidder of the Middle School Energy Education project did not intervene in this proceeding, the Commission notes that its TRC score was even higher than the LIMEP at 1.78 and it had the same 0.95 UCT score.

PO at 111. The Proposed Order's statutory interpretation and factual findings are consistent with the statutory framework in Section 16-111.5B(a)(5). 220 5/ILCS 16-111.5B (a)(5). Staff and Ameren's reading of Section 16-111.5B is not supported by the language of the statute itself. For all of these reasons, the Proposed Order's finding that these programs should be included in the portfolio should be adopted.

III. CONCLUSION

In accordance with the recommendations above, the People of the State of Illinois respectfully request that the Commission enter a final Order in this docket consistent with the arguments and findings included in the “Section 9 Energy Efficiency” sections of the Proposed Order.

Respectfully submitted,

People of the State of Illinois
By Lisa Madigan, Attorney General

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